

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIDEOAMP, INC.,

Petitioner,

v.

THE NIELSEN COMPANY (US), LLC,

Patent Owner

Case IPR2026-00310
Patent No. 12,063,402

**PATENT OWNER'S PRELIMINARY RESPONSE
TO PETITION FOR *INTER PARTES* REVIEW**

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I. INTRODUCTION

Patent Owner The Nielsen Company, LLC (“Patent Owner”) requests the Board deny institution because Petitioner VideoAmp, Inc. (“Petitioner”) fails to demonstrate a reasonable likelihood of unpatentability of any challenged claim of U.S. Patent No. 12,063,402 (“the ’402 Patent”).

Petitioner’s mappings for the independent claims (Grounds 1A and 2A) include multiple instances of limitations not taught or suggested by the art. (e.g., limitation 1.3’s *demographic information*¹, limitation 1.4’s *geographic location...derived from a positioning system of the mobile phone*, limitation 1.7’s *associating...responsive to determining that the media content has been presented*). In addition, Petitioner conflates distinct claim limitations by mapping the same prior art element to teach both. Seemingly aware of the weakness of their own arguments, Petitioner relies on a tortured reading of claim language in an attempt to contort the prior art to fit the claims. The above issues are all rooted in Petitioner’s attempt to make irrelevant prior art relating to location-based advertising somehow address the problem of determining complex audience metrics, per the invention of the ’402 Patent. For these reasons and others discussed in detail below, Petitioner fails to meet its burden, and institution should be denied.

¹ All claim language is italicized for ease of reference.

II. ALL GROUNDS: PETITIONER'S PRIOR ART FAILS TO TEACH OR SUGGEST *ACCESSING DEMOGRAPHIC INFORMATION*

The Petition maps Kerr's user location (i.e., mobile phone location) to *accessing demographic information indicative of a characteristic of an audience member*...., per limitation 1.3/12.1/21.1 of the independent claims of the '402 Patent. Petition, 28, 70 (using the "same reasons" from claim 1 mappings to address claims 12 and 21); VA-1001, 25:34-39, 26:42-47, 27:44-49. However, Petitioner's position rests on a fundamental, unsupported assumption: that an audience member's **current** location is *demographic information*. It is not, and because of this, relying on Kerr's user location to teach *demographic information* is fatally flawed. Additionally, Petitioner fails to differentiate *demographic information* from *reference* location from a *geographic location of the mobile phone*, which are distinct claim components recited separately (*see* limitation 1.4/12.2/21.2) Petition, 36-37, 70. Petitioner thus reads the latter term out of the limitation and/or renders it meaningless. As set forth below, Petitioner's prior art fails to teach *demographic information*, and Petitioner's cursory alternatives fail to remedy this issue.

A. The User's Current Location is Not *Demographic Information*

In order to teach the claimed step of *accessing demographic information indicative of a characteristics of an audience member associated with a mobile phone*, Petitioner relies on Kerr's "user location based on a location of a mobile phone." Petition, 28. Petitioner alleges "location information of a mobile phone

based on a ‘location message’ received from the mobile phone” is “(“*accessing demographic information*”))” (emphasis in original). Petition, 28. However, Kerr’s user location (i.e., mobile phone location) does not meet *demographic information*, for the reasons set forth below. Thus, Kerr fails to teach or suggest limitation 1.3.

1. Petitioner Misrepresents the Teachings of the ‘402 Patent

First, quoting the ’402 Patent, Petitioner asserts that *demographic information* “includes the ‘location’ of a panelist.” Petition, 27. However, in supporting this claim, Petitioner’s quote of the ’402 Patent strategically applies an ellipsis to imply that the “demographic information (e.g., ...location)” is broad enough to encompass the prior art. However, this ellipsis hides important language: “The demographic information (e.g., race, age or age range, gender, income, **home location**², education level, etc.)...” ’402 Patent, 4:18-34. Accordingly, and counter to Petitioner’s representations, the *demographic information* is not just any “location” of the panelist, as Patent Owner represents, but instead includes the **home** location of the panelist.

A panelist’s **home** location is consistent with the other examples in the list of types of demographic information, which are all inherent, durable characteristics of the panel members, not temporary attributes that change from moment to moment.

² Any emphasis is added unless stated otherwise.

This is further evident in the way the '402 Patent describes obtaining *demographic information*: “demographic information is obtained from a user when, for example, the user joins or registers for the panel.” '402 Patent, 4:18-20. By contrast, the current location of a user changes constantly as the user goes about their day and collecting it at panel registration time would be either impossible or useless. Accordingly, the language selectively quoted by Petitioner does not support a current panelist location being *demographic information*.

Petitioner next attempts to shoehorn the user’s current location into being *demographic information* by pointing to FIG. 6 of the '402 Patent:

Examples of demographic information

	602 PANELIST IDENTIFIER	603 REFERENCE TYPE	604 REFERENCE LOCATION	605 REFERENCE AREA	606 GENDER	608 AGE	610 CITY OF RESIDENCE	612 RELATIONSHIP STATUS
616 →	10001	DUPLEX	41.87989, -87.637160	RADIUS = 12 FEET	M	50-54	CHICAGO ILLINOIS	MARRIED
618 →	10002	HOUSE	41.748056, -88.165556	RADIUS = 30 FEET	F	35-39	NAPERVILLE ILLINOIS	MARRIED
620 →	10003	APARTMENT	39.739166, -104.984720	RADIUS = 13 FEET	F	18-34	DENVER COLORADO	SINGLE
622 →	10003	GYM	39.711433, -104.938967	RADIUS = 45 FEET	F	18-34	DENVER COLORADO	SINGLE
624 →	10003	VACATION HOME	28.415833, -81.298889	RADIUS = 36 FEET	F	18-34	ORLANDO FLORIDA	SINGLE

Petition, 27-28 (citing '402 Patent, FIG. 6) (red annotations in Petition); VA-1003, ¶57. This is flawed for multiple reasons.

First, the user's current location is nowhere present in the table FIG. 6, as neither the REFERENCE LOCATION 604 column nor the CITY OF RESIDENCE 610 column relates to a user's **current** location. Instead, FIG. 6 depicts only locations and characteristics durably associated with the user, to "facilitate" associating panelist information with "monitoring information." VA-1001, 17:45-48. Describing reference location 604, the '402 Patent states:

For example, in row 620, the reference location 604 is associated with an apartment the panelist may live at; in row 622, the reference location 604 is associated with a gym the panelist frequents; 15 and, in row 624, the reference location 604 is associated with a vacation home that the panelists owns.

VA-1001, 18:11-16. Notably, all of these reference locations relate to the **same panelist**, with PANELIST IDENTIFIER 10003. *See* VA-1001, FIG. 6, *supra*. Thus, under Petitioner's reading of "reference location" as "current location," the same panelist's "current location" is simultaneously at home, at the gym, and away on vacation. Such a reading is contradictory on its face.

Second, Petitioner's annotations of FIG. 6 are misleading at best. In annotating FIG. 6, Petitioner highlights columns 604 and 610 and labels them "Examples of demographic information." Petition, 28 (annotating '402 Patent, FIG. 6, *infra*). However, this is not what the '402 Patent states. Instead, the '402 Patent states "[D]ata table 600 associates a panelist identifier 602 with a reference type

603... and a reference location 604.” **After** discussing this reference information, the patent goes on to **separately** discuss demographic information:

Further, the example data table 600 **includes demographic information** associated with the registered panelists. For example, the data table 600 of FIG. 6 includes a gender identifier 606, an age range 608, a city of residence 610 and a relationship status 612 for the panelists included in the data table 600.

18:64-19:2. Thus, the specification distinguishes the **reference** information (603, 604, and 605) from **demographic** information (606, 608, 610, and 612) and there is a “clear implication of the claim language” that the “reference location,” as depicted in FIG. 6, is distinct from the claimed *demographic information*.

2. Petitioner’s Mapping Conflates Reference Location with Demographic Information

Despite this clear distinction between *demographic information* and *reference location*, Petitioner conflates these two disparate concepts throughout. For example, in mapping, *accessing demographic information*, Petitioner claims that the “location information of a mobile phone” is accessed “based on a ‘location message’ received from the mobile phone.” Petition, 28. However, the location information in the location message is for beacon locations, which Petitioner maps as the *reference location* recited in limitation 1.3. Petition, 31 (“FIG. 16 below depicts an example environment in Kerr that includes a plurality of geofences (“***reference areas***”) and beacon locations (“***reference locations***”)) (emphasis in original). Thus, Petitioner

equates the location of the beacons (*reference locations*) with *demographic information*.

As described above, both the specification and the claims of the '402 patent distinguish *reference locations* from *demographic information*, and the Board has long held that separately listed claim elements are “‘distinct component[s]’ of the patented invention.” *Becton*, 616 F.3d 1249 (citing *Gaus v. Conair Corp.*, 363 F.3d 1284, 1288 (Fed. Cir. 2004)). Given *reference location* is claimed separately from *demographic information* in the same limitation 1.3, there is a “clear implication of the claim language” that the *reference location* is distinct from the *demographic information*. *Becton*, 616 F.3d 1254. Accordingly, because Petitioner impermissibly maps the same Kerr information (mobile device location) to two distinct claim terms (*reference location* and *demographic information*), Petitioner fails to establish how the prior art teaches every element of claim 1 by effectively rendering one term meaningless and/or reading a term of the claim. 441 F.3d, 945, 950 (Fed. Cir. 2005) (“claims are interpreted with an eye toward giving effect to all terms in the claim.”); *Wasica Finance GmbH v. Continental Automotive Systems, Inc.*, 853 F.3d 1272, 1288 n.10 (Fed. Cir. 2017) (finding rendering claims terms “void, meaningless, or superfluous” is “highly disfavored”).

3. *Petitioner Conflates the Geographic Location of the Mobile Device with Demographic Information*

Furthering the confusion, Petitioner **also** consistently conflates the *demographic information* with the *geographic location of the mobile phone*. For example, in mapping *accessing demographic information*, Petitioner states, “Kerr determines user location based on a location of a mobile phone associated with a user.” Petition, 28 Petitioner then asserts the user location (i.e., mobile device location) also meets *a geographic location of the mobile phone* in limitation 1.4. Petition, 39-40 (stating the mobile phone provides “GPS coordinates representing the user’s location in a location message”).

However, Kerr’s “location of a mobile phone associated with a user” (Petition, 28) cannot be *demographic information* because the geographic location of the user’s mobile is claimed separately from *demographic information*. Specifically, limitation 1.4 requires that a *message sent* must include **both** the *geographic location of the mobile device* (i.e., the user’s current location) **and** an *identifier associated with the demographic information*. VA-1001, 25:40-48.

Nor is there is anything in the claims or the ’402 Patent specification to “suggest” the *demographic information* and *geographic location* are “the same structure,” and accordingly the “different terms in the claims connote[] different meanings.” *See generally*, VA-1001; *Becton*, 616 F.3d 1254 (*citing CAE Screenplates, Inc. v. Heinrich Fiedler GmbH & Co.*, 224 F.3d 1308, 1317 (Fed. Cir.

2000)). Indeed, in the embodiment depicted in FIG. 7, the data table (for example, such as might be generated by compiling the recited messages), separately includes columns for the *geographic location of the mobile device* (“device location 708”) and the *access[ed] demographic data* (“demographic 50 information retrieved from the example data table 600 (e.g., city of residence 712)”).

	702 →	704 →	706 →	708 →	710 →	712 →
	CENSUS OR PANEL DATA?	PANELIST IDENTIFIER	REQUESTED WEBSITE	DEVICE LOCATION	TIMESTAMP	CITY OF RESIDENCE
720 →	PANEL	10001	HOST1.COM	41.87989, -87.637158	11/10/2013 9:15:00 AM	CHICAGO ILLINOIS
722 →	CENSUS	N/A	HOST2.COM	N/A	11/10/2013 9:45:05 AM	N/A
724 →	CENSUS	N/A	HOST3.COM	42.031022, -88.033502	11/11/2013 8:47:16 PM	N/A
726 →	PANEL	10001	HOST2.COM	41.87989, -87.637158	11/15/2013 10:12:06 PM	CHICAGO ILLINOIS
728 →	PANEL	10003	HOST4.COM	39.739167, -104.984722	11/20/2013 11:59:49 AM	DENVER COLORADO

FIG. 7

VA-1001, FIG. 7 (annotations added). Thus, there is a “clear implication of the claim language” that the “geographic location of the mobile device,” as recited in limitation 1.4, does not qualify as *demographic information*. *Becton*, 616 F.3d 1254.

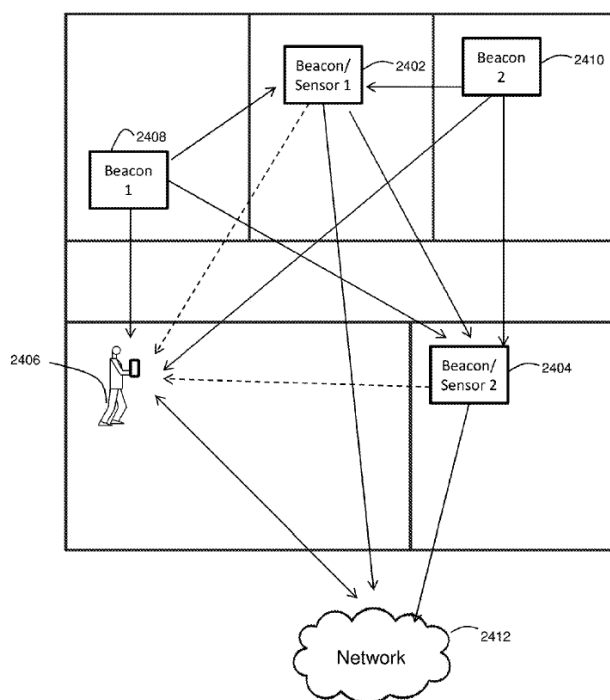
For this reason and because the separate listed claim elements are distinct components, Petitioner has essentially read out the latter term from the claims and/or rendered *geographic location* meaningless by purporting Kerr’s mobile phone location (i.e., user location) teaches both. *Bicon, Inc. v. Straumann Co.*, 441 F.3d, 945, 950 (Fed. Cir. 2005) (“Claims are interpreted with an eye toward giving effect to all terms in the claim.”); *Wasica Finance GmbH v. Continental Automotive Systems, Inc.*, 853 F.3d 1272, 1288 n.10 (Fed. Cir. 2017) (finding rendering claims terms “void, meaningless, or superfluous” is “highly disfavored”). Accordingly, nothing cited by Petitioner from the ’402 Patent supports Petitioner’s contention that a user’s current location (or the location of their mobile device) falls within the scope of the claimed *demographic information*.

B. It Would Not Have Been Obvious to Modify Kerr to *access demographic information*

Recognizing the weakness of their arguments, Petitioner provides a cursory alternative argument that “it would have been obvious to a POSITA that Kerr’s techniques would have been able to determine home locations, as location messages include suitable identifying information for a home.” Petition, 29. This argument is flawed for multiple reasons, as set forth below.

1. Petitioner's Proposed Combination Does Not Determine demographic information

Petitioner purports to show that Kerr-as-modified would be able to determine a “street address” of a “house” from “latitude and longitude coordinates” using “location messages include[ing] suitable identifying information for a home.” Petition, 29. However, Kerr’s location messages include GPS coordinates identifying beacons, not the user’s home. VA-1005, [0219]. Kerr discloses that these beacons are placed “on merchant premises,” rather than in a home, so as to allow the location of the user within the merchant’s premises. VA-1005, [0219], [0238].



VA-1005, FIG. 24 (depicting Kerr’s beacons as they might be scattered around a merchant’s premises). Kerr then teaches using the location information of these beacons to determine the location of the user’s device based on the signal strengths

of beacons at known locations. VA-1005, [0219], [0248], [0251]. The Petition goes on to state that points of interest (i.e., locations) can include houses, and that GPS coordinates can be used to determine a street address.

Thus, as best understood, the totality of Petitioner's proposed modification would be to determine the street address of a user's current location (which might be a house). This modification fails to remedy Kerr's fundamental flaws.

Petitioner does not explain how knowing the street address of the user's current location provides *demographic information*. Kerr is silent, and the Petition does not explain, how Kerr's system would determine that the user is at home to identify a **home** address rather than an address of their **current location** (which, as discussed above, is not *demographic information*). Indeed, Kerr is silent as to any correspondence between beacons and homes, being focused on retail advertising. Nor does the Petition explain why the user would configure Kerr's system within their home by "indicat[ing] the location of network objects, such as Wi-Fi beacons, relative to a premises map" (VA-1005, [0212]), given that the user would presumably know where their home is located. Accordingly, Petitioner has not shown why, or how, a POSITA would have found it obvious to use Kerr's techniques to determine users' home locations.

2. Modifying Kerr to Use Home Locations Would Frustrate the Purpose of Location-based Targeted Advertising

In proposing modifying Kerr, Petitioner contends that “it would have been obvious to a POSITA that Kerr’s techniques would have been able to determine home locations[.]” *Id.* However, Petitioner’s alternative obviousness modification fails because it would result in “the destruction of [Kerr’s] entire purpose.” *Medtronic, Inc. v. Teleflex Innovations S.a.r.l.*, 69 F.4th 1341, 1350 (Fed. Cir. 2023); *see also Intel Corp. v. Koninklijke Philips N.V.*, No. 2022-2034, 2024 WL 725243, at *1 (Fed. Cir. Feb. 22, 2024) (affirming the Board’s non-obviousness decision and “determination that Brands-Chaum’s teachings are incompatible with Menezes’s and OCPS’s multi-bit exchanges”). As explained in the Petition, “Kerr discloses a content serving system for executing ‘location-based marketing’ by serving relevant content to a user based on the location of the user’s mobile device.” Paper 1, 7. Once Kerr determines the specific “geo-fence” that a mobile device is located in, it then “determines content relevant to [that] particular geofence[.]” e.g., “a ‘Sports Shop’ geofence [] associated with a content item for ‘10% Off Ski Equipment’ and other sports content.” *Id.* at 9–10.

But if Kerr is, instead, modified to identify the user’s home location rather than their current location (as proposed by Petitioner), Kerr’s entire purpose would be destroyed. The purpose of Kerr’s invention is to serve user ads *based on the specific location where the user is*. *Id.*; *see also* VA-1005, [0017] (“[M]arketers must

turn to context”); [0019] (faulting behavioral targeting because it “fails to take into consideration the conditions and circumstances that are relevant to a mobile user, namely, the present conditions”), [0020] (noting that opinions from friends also are generally irrelevant “to a user’s present activity and current location”), [0021] (concluding that “content...must evolve and become context driven and context aware”). If Kerr instead simply determined the user was at home, prior art ad-serving methods already existed to serve those users. *Id.* at [0018]–[0020]. Thus, for this additional reason, a POSITA would not have been motivated to make Petitioner’s proposed modification. *See Daiichi Sankyo Co., Ltd. v. Matrix Lab’ys, Ltd.*, 619 F.3d 1346, 1356 (Fed. Cir. 2010) (affirming district court’s conclusion that a POSITA would not make the proposed modification “only to disregard one of [the] distinguishing characteristics” of the invention).

3. A POSITA Would Not Be Motivated to Modify Kerr as Petitioner Proposes

As part of Petitioner’s single-reference obviousness argument, Petitioner states, “identifying information, such as the information in Kerr’s location messages, could be used to identify a residential address.” Petition, 29. Even assuming that Kerr’s location could be used in this way (which Patent Owner disputes, as discussed above), the mere fact that information **could** be used to identify a home location does not mean a POSITA **would** have been motivated to do so with Kerr’s location-targeted advertising. *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir.

2015 (“obviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention.”) (emphasis not added). Because Petitioner provides no motivation other than to say identifying a home’s location was “well known,” Petitioner fails to articulate how a POSITA would have found modifying Kerr obvious. *Virtek Vision Int’l ULC v. Assembly Guidance Sys., Inc.*, 97 F.4th 882, 887-888 (Fed. Cir. 2024) (stating “the mere fact that these possible arrangements existed in the prior art does not provide a reason that a skilled artisan would have” made a modification and “[i]t does not suffice to simply be known. A reason for combining must exist”).

Petitioner’s expert separately (and confusingly) attempts to point to Kerr’s “demographic profile” that includes a user’s gender and age to make the unnecessary point that Kerr gathers “additional information from a user and would thus render [*demographic information*] obvious.” VA-1003, ¶60; Petition, 27. However, Petitioner relies solely on Kerr’s current user location for *demographic information* in the Petition, and thus any attempt by the expert to provide an alternative mapping should be ignored by the Board. Petition, 28-29; *LG Electronics, Inc. v. ATI Technologies ULC*, IPR2015-00321, Paper 20 (PTAB June 26, 2015), 12 (declining to institute on a challenged claim because though the Declaration provided explanation arguments, “these arguments are not advanced in the Petition,” and thus

the “Petition omits any adequate explanation”); 37 C.F.R. §42.22(a)(2) (stating each petition must include “[a] full statement of the reasons for the relief requested”).

III. ALL GROUNDS: PETITIONER’S PRIOR ART FAILS TO TEACH OR SUGGEST *AN IDENTIFIER ASSOCIATED WITH THE MOBILE PHONE*

Petitioner maps the claimed *identifier associated with the mobile phone* to Kerr’s teaching that “location messages also include a unique “Location_ID” associated with the mobile phone’s location.” Like *demographic information*, Petitioner twists the scope of the claimed *identifier associated with the mobile phone* to make Kerr’s teachings fit with the claim language, and this flaw is, independently, fatal to the Petition. Petition, 43-44. Understanding the weakness of their own argument, Petitioner provides another cursory obviousness argument. Both of Petitioner’s arguments fail for multiple reasons, as discussed further below.

A. Petitioner Misrepresents the *identifier associated with the mobile phone*

The ’402 Patent describes a client device transmitting a media request including “a user agent identifying characteristics of the browser 200 and/or the client device 106 such as a browser identifier, a **device identifier**, etc.” ’402 Patent, 8:51-57. The device identifier may be “a network address, a media access control (MAC) address, a telephone number, etc. associated with the client device 106.” VA-1001, 13:54-59. Additionally, the ’402 Patent describes “an identifier of the client device 106 (e.g., an international mobile equipment identity (IMEI) number,

a cookie, a MAC address, etc.).” VA-1001, 14:27-30, 17:36-40 (“device identifiers (e.g., a telephone number of the client device, a media access control (MAC) address of the client device, a serial number of the client device, etc.)”).

Petitioner ignores the actual description of *an identifier associated with the mobile device* from the ’402 Patent, and instead, Petitioner suggests the **location identifier** described in the ’402 Patent is “(the claimed ‘*identifier*’) that is ‘*associated with the mobile phone*’” (emphasis in original), citing FIG. 10 of the ’402 Patent and annotating the “LocationIdentifier” therein. Petition, 43. However, Petitioner ignores the fact that the “location identifier” represents an identifier for a beacon **location**, not an identifier for a *mobile phone*. The ’402 Patent describes the “location identifier” as “(e.g., data specifying a **device location corresponding to the geographic location** at which the media was accessed”). VA-1001, 9:9-12, 5:67-6:1 (“the beacon includes the location identifier (e.g., **the device location**)”), 11:3-5, 17:18-24, 20:50-53.

Limitation 1.4 separately claims a *geographic location of the mobile phone* and *an identifier associated with the mobile phone*, requiring both pieces of information to be present in the *message sent*. VA-1001, 25:40-44. Because there is a “clear implication of the claim language” that the “location identifier,” being the geographic location of the device, is distinct from the claimed *identifier*, the “location identifier” is not within the scope of *identifier associated with the mobile*

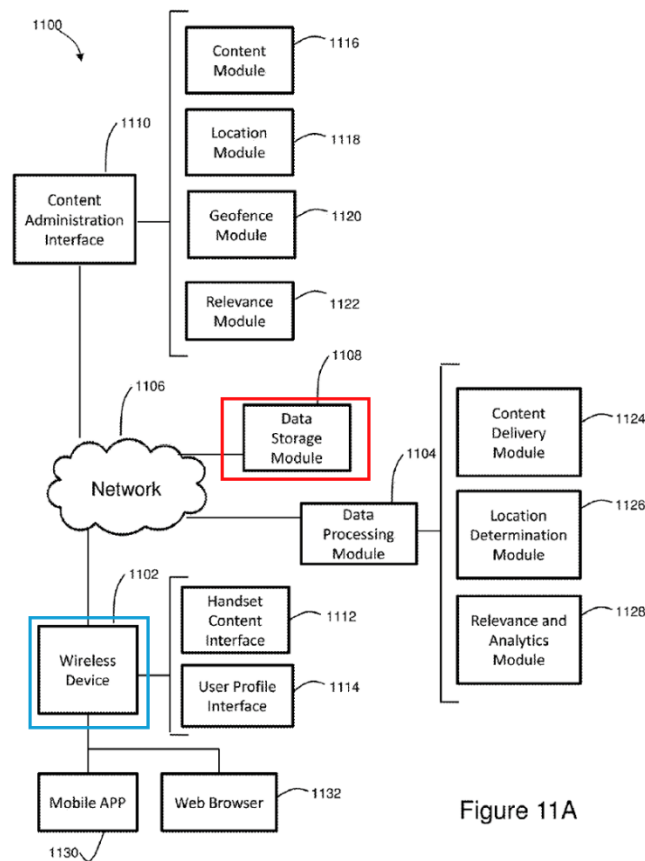
phone. Becton, 616 F.3d 1254. Accordingly, Petitioner’s assertion is incorrect and improperly renders *geographic location of the mobile phone* “superfluous.” *Power Mosfet Techs., LLC v. Siemens AG*, 378 F.3d 1396, 1410 (Fed. Cir. 2004) (finding claim interpretations “that render some portion of the claim language superfluous are disfavored”). As such, the claimed *identifier associated with the mobile phone* identifies the mobile phone and is distinct from the claimed *geographic location of the mobile phone*.

B. Kerr’s “Location_ID” Does Not Teach or Suggest *an identifier associated with the mobile phone*

Petitioner maps Kerr’s “Location_ID” included in the “location messages” meets *an identifier associated with the mobile phone*. Petition, 43-44. However, as discussed above at § III.A, a location identifier is not within the scope of the claimed *identifier associated with the mobile phone*, as it identifies a location rather than the device. Petitioner admits this, annotating Kerr’s FIG. 34 and stating, “Kerr’s location identifiers are used to identify a particular location.” Petition, 44; VA-1005, [0281] (“Location_ID has value ‘22222222,’ indicating a unique identification for a location.”). Thus, Kerr’s Location_ID fails to teach or suggest the *identifier associated with the mobile phone*.

However, even if Kerr’s Location_ID were *associated with the mobile phone*, Kerr’s “Location_ID” is not in the “location messages” sent by the wireless device, as Petitioner purports. Petition, 43-44. Rather, Kerr discloses “Location_ID” being

stored in a “database table” that associates Location_ID with a Content_ID and Relevance_Weight. VA-1005, [0281], FIG. 34. In other words, Kerr’s Location_ID is used to indicate how relevant particular content is to a given location, independent of any mobile phone. The “Location_Content_Rating table” that stores the “Location_ID” is contained in the data storage module 1108 (red) that is **separate from the wireless device 1102 (blue)**, as shown in FIG. 11A:



VA-1005, FIG. 11A (annotated), [0215] (describing “data storage module 1108 comprises one or more databases communicatively coupled to network 1106” and stores “locations of network objects, relevance weight parameters, and associations

between content items and parameters used for content targeting”), [0205], FIG. 11B, [0223], [0229] (describing “database table” being stored in “data storage module 1108”).

Petitioner even reproduces this Location_Content_Rating table in FIG. 34, but this table does not support Petitioner’s claim that the Location_ID is sent in the location message. Petition, 44. Kerr’s location message sent by the wireless device contains “location information such as a zip code, city, Global Positioning System (GPS) or other geographical coordinates.” VA-1005, [0219]. Kerr also discloses the Location_ID is “**associated with** a zip code, city, GPS coordinates, or distance range surrounding any of the preceding,” and thus is a different value from the location information sent in the location message. VA-1005, [0282]. Accordingly, Kerr does not teach or suggest the Location_ID being sent in a message by the wireless device. Thus, Petitioner fails to address how the Location_ID **that is not sent in the wireless device location message** meets the claimed *identifier* that is comprised in *a message sent from the mobile phone*.

C. It Would Not Have Been Obvious to Send Kerr’s User Profile As an identifier associated with the mobile phone

Petitioner, understanding the weakness of Kerr’s teachings, advances an alternative obviousness argument that a POSITA would have found it obvious to include “identifying information for the mobile phone” when implementing Kerr. Petition, 44-45. Petitioner alleges Kerr’s “mobile-specific ‘user profile’” renders

obvious that *an identifier* would be used. Petition, 44-45 (citing VA-1005, ¶72). However, even with Kerr’s user profile including “at least one user attribute that is associated with the wireless device or the web browser,” Kerr still fails to teach or suggest this “associated” user attribute being in a *message sent from the mobile phone*, as nothing in Kerr teaches or suggests the user profile or user attribute being sent by the wireless device in the “location message.” VA-1005, [0219], [0301], [0305]. Additionally, neither Petitioner nor Petitioner’s expert addresses how an attribute of a **user** is a **device** identifier. The exemplary “user id” and “zip code” are not **device** identifiers within the scope of *an identifier associated with the mobile phone* (see § III.A). Petition, 45 (citing VA-1005, [0276], [0288]-[0289], FIG. 30). Thus, Kerr’s user attribute fails to teach or suggest *an identifier associated with the mobile phone*.

Petitioner also alleges “[i]ncluding mobile phone specific identifiers in Kerr’s location messages” would have been obvious because “it was well known before the Benefit Date that suitable mobile phone identifiers existed” and were included in sent messages. Petition, 45-46. However, even if sending mobile phone identifiers was well-known and a POSITA **could have made** Petitioner’s proposed, it does not follow that a POSITA **would have been motivated to make** such a modification. *Virtek Vision Int’l ULC*, 97 F.4th 887-888.

Furthermore, even in this alternative obviousness argument, Petitioner still fails to point to any prior art teachings within the references of the ground (either Kerr or Dutton) that actually teach or suggest *an identifier associated with a mobile phone*. Petition, 44-46. The Board has admonished the use of POSITA knowledge to patch a hole where a prior art reference does not teach a limitation, and thus, this obviousness argument should be rejected. *Memo of Enforcement and Non-waiver of 37 C.F.R. § 42.104(B)(4)*, Stewart, July 31, 2025 (Director stating “applicant admitted prior art (AAPA), expert testimony, common sense, and other evidence that is not ‘prior art consisting of patents or printed publications’ (collectively, ‘general knowledge’) may not be used to supply a missing claim limitation”). The claimed *identifier associated with a mobile phone* is precisely such a missing limitation.

IV. ALL GROUNDS: PETITIONER’S PRIOR ART FAILS TO TEACH OR SUGGEST A MESSAGE SENT FROM THE MOBILE PHONE INCLUDING A *GEOGRAPHIC LOCATION OF THE MOBILE PHONE...DERIVED FROM A POSITIONING SYSTEM OF THE MOBILE PHONE*

Petitioner mischaracterizes Kerr’s teachings, incorrectly alleging Kerr renders *a geographic location of the mobile phone...derived from a positioning system of the mobile phone* obvious “in multiple ways.” Petition, 39. The GPS on Kerr’s wireless device (*a positioning system of the mobile phone*) is not what generates the “location information” in the “location message” Petitioner maps to the *geographic location* recited in limitation 1.4. Petition, 39-40. Rather, Kerr’s beacons that are separate

from the wireless device provide the “location information” sent in the message. VA-1005, [0219]. This beacon information is then combined by a location determination module 1126, also remote from the mobile phone to derive a geographic location. Thus, Kerr fails to teach or suggest *a geographic location of the mobile phone...derived from a positioning system of the mobile phone* being in the *message sent*, per limitation 1.4.

A. Kerr’s Mobile Phone GPS Does Not Provide the Claimed *geographic location*

Petitioner claims that Kerr renders the *message comprises a geographic location of the mobile phone...wherein the geographic location of the mobile phone is derived from a positioning system of the mobile phone* “obvious in multiple ways.” Petition, 39. Petitioner first alleges Kerr’s GPS system in the phone “is used to provide GPS coordinates representing the user’s location in a location message, which includes ‘location information such as a Zip code, city, Global Positioning System (GPS) or other geographical coordinates,’” citing the “location message” disclosed in Kerr’s [0219]. Petition, 39-40. However, Petitioner ignores the fact that the “location information” in the “location message” is information about the **beacon** locations. VA-1005, [0219]. Indeed, Kerr instead discloses that location messages include a “signal strength” and “identification” of “**each beacon signal** detected by the device.” *Id.* Though Kerr discloses some positioning occurring on the wireless device via a “GPA or A-GPS,” information from the phone’s GPS is

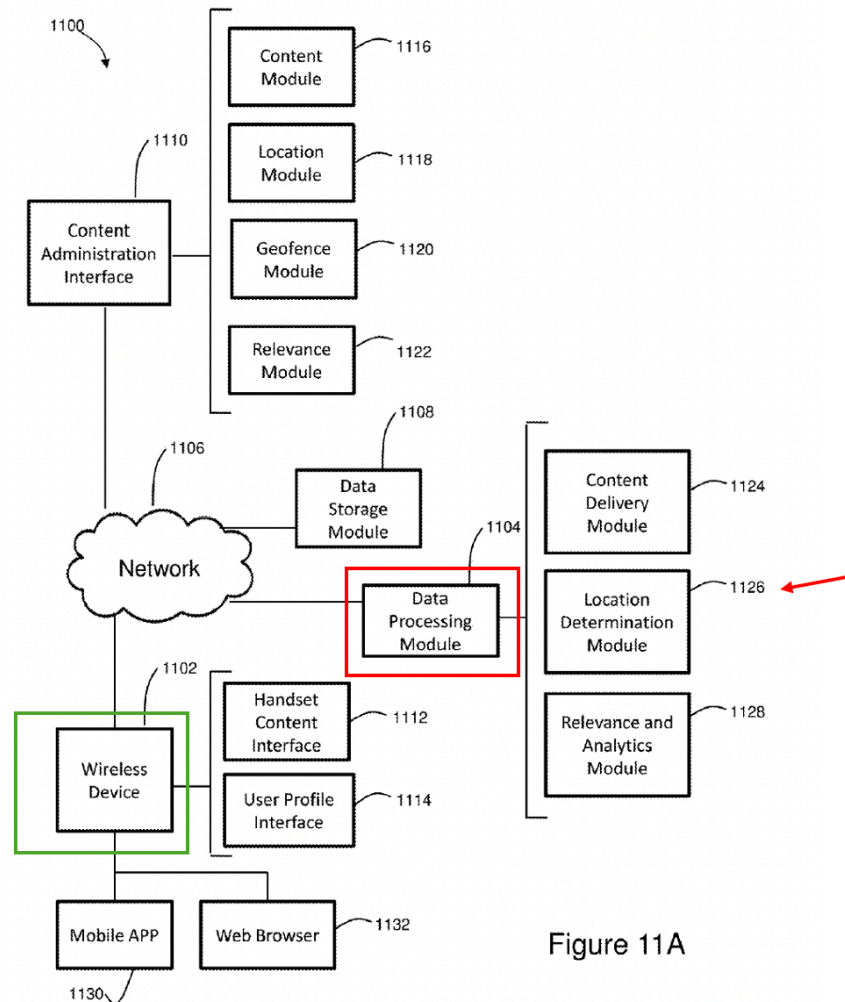
not disclosed as being included in the location messages. VA-1005, [0109], [0154], [0157], [0179], [0219].

Petitioner also alleges “Kerr discloses that wireless devices included a ‘GPS module’ (*‘a positioning system of the mobile phone’*) to ‘provide a location,’” but fails to provide any support to the mobile phone GPS-provided location being part of the location information in the location message. Petition, 39-40. A mobile phone GPS existing is not enough to teach limitation 1.4, as the mobile phone *positioning system* must provide the *geographic location of the mobile phone in a message sent from the mobile phone*. VA-1001, 25:40-48; *Virtek Vision Int’l ULC*, 97 F.4th 887-888.

B. Kerr’s Wi-Fi Triangulation does not provide *geographic location ... derived from a positioning system of the mobile phone*

Seemingly realizing that Kerr does not teach transmitting information *derived from a (GPS) positioning system of the mobile phone*, Petitioner turns to Kerr’s teachings of Wi-Fi triangulation, stating that the beacon signal strength information is “consistent with the ’402 patent, which describes wireless triangulation methods, including ‘Wi-Fi data.’” Petition, 41 (citing VA-1001, 9:29-39). But Petitioner fails to appreciate that the triangulation described in the ’402 Patent is performed by the “positioning system 208” **on the client device 106**, not by a remote location determination module 1126, as taught by Kerr. As Petitioner admits, Kerr’s “location determination module” performs the triangulation. Petition, 41. Petitioner

conveniently ignores that the location determination module 1126 (red arrow below) is not located in the mobile phone, but is located remotely from the “wireless device 1102” (green below) at a data processing module 1104 (Red below):



VA-1005, FIG. 11A (annotated), [0218]. Kerr discloses the “location of the wireless device is determined by the location determination module 1126 using information **transmitted from wireless device 1102,**” further confirming module 1126 is remote from the mobile phone. VA-1005, [0213], [0248]. Accordingly, the triangulation

Petitioner points to is not performed by a *positioning system of the mobile phone* and therefore does not support Petitioner's claim that Kerr renders limitation 1.4 obvious.

C. Petitioner Provides No Motivation to Modify the Operation of Kerr's System

For the reasons discussed above, Kerr does not teach or suggest any *positioning system of the mobile phone providing a geographical location of the mobile phone in a message sent from the mobile phone*. Accordingly, Petitioner does not point to any prior art that actually teaches or suggests limitation 1.4 in the Grounds 1A/2A, and thus Petitioner fails to show how every element of the claims is taught.

Petitioner asserts that "it was known as of the Benefit Date that mobile phones included GPS for determining the location of the mobile phone." However, Petitioner fails to provide a motivation as to why a POSITA would have modified the Kerr system to use the mobile phone's GPS when sending location information in the location message rather than sending the beacon information as the inventors intended. Such conclusory statements of possibility are insufficient to show obviousness. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) (finding a "[t]o satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements," but "must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of

obviousness”); *Virtek Vision Int’l ULC*, 97 F.4th, 888 (“A reason for combining must exist.”). Petitioner’s expert provides no additional analysis, merely parroting the Petition verbatim, and thus should be entitled little weight. VA-1003, ¶¶ 67-69; *TQ Delta, LLC v. Cisco Sys., Inc.*, 942 F.3d 1352, 1358 (Fed. Cir. 2019) (“conclusory expert testimony does not qualify as substantial evidence.”); *Xerox Corp v. Bytemark, Inc.*, IPR2022-00624, Paper 9 (PTAB Aug 24, 2022), 15 (expert testimony that “adds little to the conclusory assertion for which it is offered to support” is “entitled to little weight”).

V. ALL GROUNDS: PETITIONER’S PRIOR ART FAILS TO TEACH OR SUGGEST *ASSOCIATING THE MEDIA IDENTIFYING INFORMATION WITH THE DEMOGRAPHIC INFORMATION RESPONSIVE TO DETERMINING THAT THE MEDIA CONTENT WAS PRESENTED*....

According to the plain claim language of limitation 1.7/12.5/21.5, the *associating* must be done *responsive to determining that the media content was presented*. VA-1001, 25:60-64, 26:66-27:2, 28:15-18. To teach *associating the media identifying information with the demographic information*, Petitioner relies, for Ground 1A, on Kerr’s teaching of adjusting a relevance weight value “associated with a content item.” Petition, 56-57. Petitioner misstates the sequence of events, as the Content_ID (Petitioner’s mapped *media identifying information*) is associated with the Location_ID (Petitioner’s mapped *demographic information*) when the content item is added to Kerr’s advertising system, prior to transmission and

presentation of the content at the wireless device. VA-1005, [0243], Fig. 17. Thus, any *associating* is not *responsive to determining that media content was presented....* Petitioner's Ground 2B also fails to show how the prior art teaches or suggests limitation 1.7, as Dutton fails to address any *associating* being done between *the media identifying information* and *demographic information*.

A. Kerr's Content_ID is Already *associate[ed]* with the Location_ID Prior To Any Presentation of the *media content*

Petitioner claims that Kerr's "'adjust[ing] the relevance weight value associated with a content item' for a location" teaches *associating the media identifying information with the demographic information...responsive to determining that the media content was presented....* of limitation 1.7, because the adjustment is "based on user feedback, for example, by determining 'if a content item transmitted to the wireless device was selected'." Petition, 56-57. Petitioner alleges Kerr's Location_ID teaches *demographic information*, and Kerr's Content_ID teaches the *media identifying information*. Petition, 57. As discussed elsewhere, Kerr's Location_ID is not *demographic information*, but Petitioner's mapping for limitation 1.7 has an independently fatal flaw: Kerr's Content_ID is *associate[ed]* with the Location_ID prior to any presentation of the media content, and thus the association cannot be *in response to* that presentation.

In particular, Kerr teaches that the Location_ID can be "a unique identification associated with a geofence." VA-1005, [0282]. Kerr further teaches that the

association between a Content_ID and a Location_ID is performed manually, by an administrator, when setting up the system:

an illustrative geofence content association interface 1700 is shown.

The content administrator may use the geofence content association interface to create an association between a geofence and one or more content items. To create the association, the content administrator selects a geofence identifier from geofence drop down menu 1702 and one or more content items from content item list 1704.

By contrast, Petitioner relies on the relevance weight adjustment process. Kerr describes (and Petitioner cites) the process of adjusting the relevance weight value, as follows:

The method proceeds to decision diamond 3906, at which the relevance and analytics module determines if a content item transmitted to the wireless device was selected. If a content item was selected, a point value v is multiplied by the value of the Relevance_Weight **field of the Location_Content_Rating entry having a Content_ID value matching the content item identifier and an Location_ID value matching the location identifier**, as indicated at block 3910.

VA-1005, [0305]. In other words, the fields of the “Location_Content_Rating entry” that include the Content_ID associated with the Location_ID are already stored in the “database” Location_Content_Rating table when the content is transmitted to the user. VA-1005, [0281], and the relevance weight adjustment process simply (as the name suggests) adjusts a relevance weight for a pre-existing association. Thus, the

Content_ID and Location_ID are already associated prior to any content being *presented* to the user, and the *associating* is not done *responsive to determining that the media content was presented....*

In support of their mapping, Petitioner depicts the “Location_Content_Rating” entry in FIG. 34, showing where content has been assigned “a ‘Relevance_Weight’ (an ‘*association*’)” to a “Location_ID” (an identifier representing ‘*demographic information*’) and ‘Content_ID’ (‘*media identifying information*’):”

Location_Content_Association	
Content_ID	00000001
Location_ID	22222222
Relevance_Weight	500

Figure 34

VA-1005, FIG. 34.

Petition, 57-58 (citing VA-1005, FIG. 34). However, Petitioners ignore the fact that the “initial relevance weight” is **assigned prior to the content being transmitted to the user**, so the Relevance_Weight can then be “adjust[ed]” when the user actually selects the transmitted media content. VA-1005, [0280], [0282], [0305]. Therefore, Kerr’s Content_ID, Location_ID, and (pre-adjustment) Relevance_Weight are associated prior to sending any content to the user and the

user selecting such content, meaning the *association* is not done *responsive to* the media content being *presented*. VA-1005, [0222], [0287].

Accordingly, Kerr fails to teach or suggest *associating the media identifying information* (mapped to the Content_ID) *with the demographic information* (mapped to the Location_ID) *responsive to ... the media content being presented*

B. Modifying Kerr to Associate the Content_ID with the Location_ID Responsive to Media Being Presented Would Frustrate the Purpose of Relevance Weight Adjustment and Kerr’s Location-based Targeted Advertising

Kerr’s relevance weight adjustment operation relies on the Content_ID and Location_ID already being stored with a Relevance_Weight value, so that the correct Relevance_Weight value can be adjusted by the multiplier. VA-1005, [0305]. If Kerr’s relevance weight adjustment process were modified to *associat[e]* the Content_ID with the Location_ID only when the content is presented to the user, then Kerr’s location-based advertising system would have no way to verify the correct Relevance_Weight was being adjusted. For example, Kerr discloses that only the “Relevance_Weight field” having a Content_ID “matching the content identifier” and a Location_ID “matching the location identifier” of the user-selected content is multiplied by “point value v.” VA-1005, [0305]. If the Content_ID and Location_ID were not already associated, no adjustment could occur because there is no entry for the content to be adjusted. Accordingly, the entire adjustment process would be rendered useless with such a modification. Therefore, a POSITA would

not have been motivated to modify Kerr to *associat[e] the media content identifier* (mapped Content_ID) *with the demographic information* (mapped Location_ID) *responsive to the media content being presented.... Daiichi Sankyo Co.*, 619 F.3d 1356.

Additionally, the point of Kerr's location-based advertising is to send location-relevant content to the user based on the user's "present" context. VA-1005, [0017]-[0020]; *see* §IV.C. To do this, the system already knows what content is relevant to which geofences before even transmitting content to the user. VA-1005, [0284], [0167]. For example, Kerr describes "Content item '10% Off Ski Equipment' has been associated with the Sports Shop geofence" prior to sending the content to the user, so the user is appropriately sent the ski content when the wireless device "is located within the Sports Shop geofence." VA-1005, [0284], FIG. 17 (showing "Content Association" between "geofence" and "Content Item"). If the content and location are not associated prior to presenting the content to the user, the context-aware benefit of Kerr's advertising system would be ruined. Accordingly, modifying Kerr to associate the content with a location *responsive to* presenting any content would frustrate not only the adjustment process, but would result in the "destruction of [Kerr's] entire purpose" of the location-based advertising system. *Medtronic, Inc.* 69 F.4th 1350.

This purpose frustration showcases an important distinction between Kerr and the invention of the '402 Patent: Kerr is concerned with simplistic location-based advertising delivery, while the '402 Patent's audience measurement system provides the "useful" benefit of complex correlation between audience impressions, demographic information of the audience, and the media presented to allow companies and/or individuals to "understand the reach and effectiveness of the media." VA-1005, [0013], [0020]; VA-1001, 2:30-38, 3:14-36, 3:56-60. The association of demographic information of "panelists" with the media presented provides the advantage of the audience measurement entity uniquely "identify[ing] the requesting device and/or the user making the request." VA-1001, 3:60-4:16, 4:38-55 (describing linking media access data "to demographic information" as "advantageous"). Kerr is not concerned with collecting rich audience metric data through demographic information association, but rather only delivers location-relevant content to the user. VA-1005, [0284], [0305]. This is why Kerr already has the Location_ID associated with the Content_ID prior to sending content to the user. Contrastingly, the goal of the '402 Patent invention is to collect complex audience metrics by associating demographic information with the media access data, not to deliver any content. VA-1001, 4:56-61 (the "audience measurement entity does not provide content and/or advertisements to end users").

Thus, for the above reasons, a POSITA would not have been motivated to make Petitioner's proposed modification.

C. Dutton Fails to Teach or Suggest *associating the media identifying information with the demographic information responsive to determining that the media content was presented....*

In addition to Petitioner's fatally flawed Kerr argument for limitation 1.7, Petitioner presents an alternative obviousness argument in view of Dutton (Ground 2A). Petition, 61. Petitioner contends "[l]ike Kerr, Dutton also explicitly discloses that the relevance of a content item can be determined by discovering where that content was presented." Petition, 61 (citing VA-1006, [0071], [0094]). Nothing about this contention explains or addresses how Dutton actually teaches *associating the media identifying information with the demographic information responsive to determining that the media content was presented....*

Petitioner claims that Dutton's disclosures of "techniques that determine a location's relevance to a piece of content, particularly in examples where the initial relevance of the content to that location may not be known" teach *associating....*, once again failing to articulate how determining a content's relevancy to a location teaches or suggests *associating the media identifying information with the demographic information....* Petition, 61. Indeed, given that Dutton is directed to "determin[ing] a location's relevance to a piece of content," it is unclear what Petitioner is pointing to as "demographic information" to be associated. Petitioner

cites an example of the vague “techniques” as Dutton describing “it can be determined that ‘in Airports a users [*sic*] always has a high interest in ordering beverages’ and thus ‘this affinity may be recognized specifically when the user is in a transportation hub,’” yet still fails to explain how a beverage interest teaches or suggests *media identifying information* or *demographic information*, let alone how the two would be *associate[ed]*. Petition, 61 (citing VA-1006, [0071], [0094]). Thus, the Board is left to figure out how Dutton’s disclosures teach or suggest limitation 1.7 for themselves, which is improper. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (2012) (requiring *inter partes* review petitions to identify “with **particularity**...the evidence that supports the grounds for the challenge to each claim”)). Thus, Petitioner fails to show how the prior art teaches limitation 1.7 in Ground 2B.

Petitioner provides a vague mapping with Dutton undoubtedly because Dutton does not teach or suggest limitation 1.7. Dutton describes a “user interest level” for a “particular POI” by rating the content. VA-1006, [0071]. The “location discovery system 100” then “learns a user’s affinities for respective POIs” that are “stored in the user’s affinity profile.” VA-1006, [0071]. But a user affinity is not within the scope of *demographic information* or *media identifying information*. For example, it is fundamentally unlike any of the examples of demographic information (“e.g., race, age or age range, gender, income, home location, education level, etc.) or media

identifying information (“e.g., a website address” or “URL address”) given in the ’402 Patent. ’402 Patent, 4:21-22, 3:20-22, 20:57, This is especially true given that the user is showing affinity to a **place** rather than any specific media content. VA-1006, [0071]. Dutton’s airport example suffers a similar flaw, only showing the system associating a user’s affinities (e.g., ordering beverages) with a location (e.g., airport), rather than *associating any media identifying information with the demographic information*. VA-1006, [0094]. Lastly, any opinion on the obviousness argument provided by Petitioner’s expert should be discarded, given the expert merely parrots the Petition verbatim. *TQ Delta, LLC*, 942 F.3d 1358; *Xerox Corp.*, 15.

For these reasons, Petitioner’s attempt at an alternative obviousness argument fails and Dutton does not remedy the flaws of Kerr. Accordingly, and given all the above reasons, Petitioner fails to show the prior art teaches or suggests limitation 1.7, and the Board should thus find Petitioner fails to demonstrate a reasonable likelihood of unpatentability.

VI. CONCLUSION

For the reasons provided herein, Patent Owner submits that Petitioner has not established a reasonable likelihood that at least one challenged claim is unpatentable, and therefore, institution should be denied.

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CERTIFICATION OF WORD COUNT

The undersigned certifies pursuant to 37 C.F.R. § 42.24 that the foregoing Patent Owner's Preliminary Response to Petition for *Inter Partes* Review, excluding any table of contents, mandatory notices under 37 C.F.R. § 42.8, certificates of service or word count, or appendix of exhibits, contains 7,356 words according to the word-processing program used to prepare this document (Microsoft Word).

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION FOR INTER PARTES REVIEW was served on June 22, 2026, by email on the following counsel of record for Petitioner:

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